



*... with liberty
and justice for all*

The Initial Report of the
**NORTH CAROLINA EQUAL ACCESS
TO JUSTICE COMMISSION**

Executive Summary

MAY 2008

Supreme Court
State of North Carolina
Raleigh

CHAMBERS OF
CHIEF JUSTICE SARAH PARKER

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Greetings:

Access to the civil justice system for those people of modest means who do not have the resources to pay for legal services is an issue of grave concern. In an effort to address this serious problem, the North Carolina Equal Access to Justice Commission was created by order of the North Carolina Supreme Court in November 2005. In its simplest terms, the charge to the Commission was to evaluate the need, propose possible solutions, and undertake initiatives to implement solutions. This initial report of the Commission reviews the needs assessment and summarizes the work of the Commission to date.

Of particular note was the Equal Access To Justice Summit convened in October 2007. This interdisciplinary gathering brought together representatives of the legal, business, academic, governmental, and nonprofit communities to learn and engage in dialogue about the economic and social implications of lack of access to the civil justice system.

The peaceful resolution of civil disputes is essential to the preservation of ordered liberty in a democratic society. However, our citizens lose confidence in the process when meaningful access to the forum for resolution of disputes is denied to a significant segment of our population.

Some of the information in this report is startling. As you read this material, I urge you to reflect upon it and to give especial thought to the following words of Thomas W. Lambeth, Senior Fellow and Former Director of the Z. Smith Reynolds Foundation, in his address to the Summit:

[D]enial of access to civil justice imprisons those denied in a situation that prevents them from being all that they might be. It prevents them from contributing all that they might contribute to the common good. Yet they are not the only prisoners when such a condition prevails. All of the community in which they live is to some extent imprisoned. We are all denied the benefits that would come from a society in which equality of access and opportunity prevail.

Thank you for your consideration of this Report.

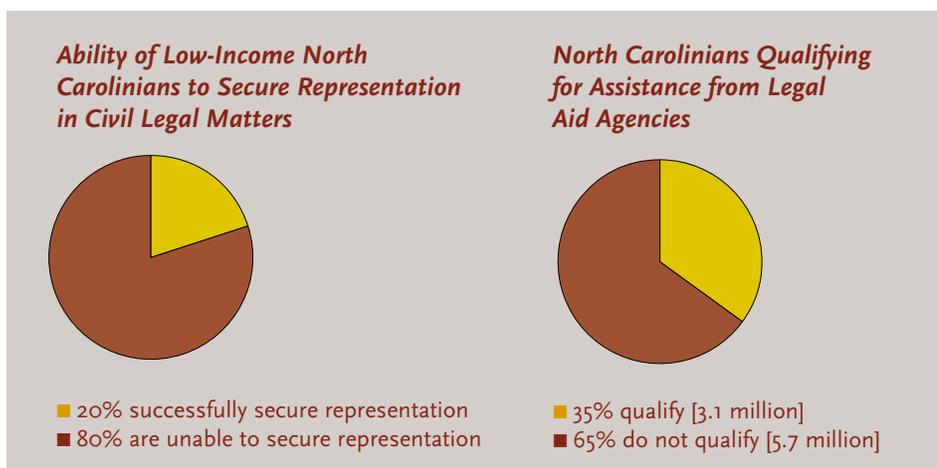
Sincerely yours,



Sarah Parker

Overview

When they need assistance with a civil legal matter, over 80 percent of low-income people and people of modest means cannot afford to pay attorneys and are unable to secure representation from publicly funded attorneys or pro bono volunteers. Currently resources are available to provide help in approximately one-fifth of such cases. In 2006, almost 3.1 million of North Carolina's 8.8 million people (over one-third of the population) had sufficiently low incomes to qualify for assistance from legal aid agencies. These low-income people and people of modest means face legal problems caused by, or exacerbated by, poverty—problems such as eviction, foreclosure, loss of custody, loss of benefits, domestic violence, unlawful termination and discrimination, and access to healthcare. Cynicism about our system of justice is rising, as people are not able to obtain legal counsel to assist them in resolving their disputes through the courts.



Real People, Real Injustice

A working mother of two who has been a victim of domestic violence—one of 40,000 domestic violence victims in North Carolina each year:

“I had black eyes. I got a little baby chair thrown at me, and it snapped a corner of my eye. I’ve been thrown into the side of a door, and the back of my head busted open. I’ve been choked while holding my youngest child. Since we have been going to Legal Aid of North Carolina and getting their help, we don’t look over our shoulders. The boys are a lot happier. They’re not as nervous. They don’t have that scared look on their face. They have smiles on their faces.”

Judges are seeing an increasing number of people appearing pro se—without any legal representation. The usual operation of court is disrupted when untrained lay advocates do not know court procedures, evidence rules, or substantive areas of the law. Judges are pressured to play a double role as an advisor to the unrepresented and as an impartial decision-maker.

Poverty creates problems that easily become legal problems. In 2006, 1.2 million people—over 13 percent of the population of North Carolina—lived on incomes below the poverty level, which is \$17,170 for a family of three. Many of these 1.2 million individuals live far below the poverty level. Twenty-four percent of children younger than five live in poverty. The median household income of legal aid clients is \$9,000 per year. Of workers, 28 percent make less than \$9.60 per hour. About 16 percent of the population of North Carolina is without either government or private health insurance. Home foreclosures rose 300 percent from 1998 to 2005, even before the current crisis.

A recent study found that the availability of legal services in the county of residence of victims is one of the most important factors in decreasing the incidence of domestic violence.



Real People, Real Injustice

Just after the death of his parents, a 73-year-old man and his wife who lived on \$15,000 a year were facing the loss of the home that they had shared with his parents, because the State did not realize that they had part ownership of the property:

“If it weren’t for the Pisgah Legal Services, I don’t know where I’d be. I was fixin’ to be out on the street.”

Nearly 740,000 North Carolina households—including working families, the elderly, and the disabled—lack affordable, safe housing. Legal aid representation can mean the difference between having shelter and being out on the street.

Current resources do not adequately meet this growing need for civil legal assistance. The total amount of public and private funding for civil legal services in North Carolina was \$23.7 million in 2008. The per capita amount of funding available for all legal aid agencies in North Carolina is \$7.58 per eligible person. Currently, funds are available for only about 200 attorneys employed by legal aid agencies, or one attorney for every 15,500 low-income clients. In contrast, overall there is one attorney for every 442 North Carolinians. Legal Aid of North Carolina (LANC) must turn away eight clients for every client accepted. Each of these cases represents a real person with a real problem. Studies have shown, and other providers confirm, that only about one-fifth of low-income people in need of legal assistance in civil matters are able to obtain assistance from a legal aid agency.

Legal aid attorneys who represent those low-income North Carolinians who are able to secure representation are stretched thin and face the emotional difficulty of triaging among people with a wide variety of desperate circumstances. Legal aid attorneys earn low professional salaries and often bear high law school debt. Under these circumstances, retention of legal aid attorneys is difficult.

Many private attorneys across North Carolina are donating countless hours to representing those who cannot afford to pay. Many more attorneys need to engage in or increase their commitment to pro bono in order to help fill the gap that LANC currently cannot fill.

Recommendations of the North Carolina Equal Access to Justice Commission

The Commission finds that North Carolina must address the lack of access to the civil justice system for the poor by:

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- ⊗ Increasing state funding for legal aid organizations.
 - ⊗ Providing a statutory right to counsel for specific types of cases.
 - ⊗ Taking new measures to increase pro bono representation.
 - ⊗ Combining the efforts of lawyers with leaders in the business community, the religious community, the government community, the nonprofit community, the academic community, and the client community.
 - ⊗ Establishing clear guidelines for the courts in cases with pro se litigants and providing more assistance for those representing themselves in the courts pro se.
 - ⊗ Providing more support for legal aid attorneys, especially through debt reduction.
 - ⊗ Improving access to the courts for those with limited-English proficiency.
 - ⊗ Educating the public about the realities of poverty and barriers to access to the civil justice system.
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Accomplishments of the Commission to Date

Achieved Mandatory IOLTA

Upon the recommendation of the Commission, the State Bar Council approved a petition to the North Carolina Supreme Court to make participation in IOLTA mandatory. As a result, on October 11, 2007, the North Carolina Supreme Court ordered the North Carolina State Bar to implement a “comprehensive” (i.e., mandatory) IOLTA program for North Carolina lawyers effective January 1, 2008.

Increased Funding for the Access to Civil Justice Act (ACJA)

The Commission set as a goal an increase in the amount of court costs that are allocated to the ACJA from the current level of \$1.05 to at least \$5 per case. During the 2007 legislative session, the North Carolina General Assembly adopted, and the governor signed, a state budget for the coming year that includes provisions which increase court fees and increase the portion of court fees allocated to the ACJA from \$1.05 to \$2.05 per case. The recurring budget also includes \$1 million in general funds for the ACJA. Senator Dan Clodfelter and Representative Martha Alexander, both members of the Commission, played key roles.

Revitalized Pro Bono Emeritus

Under previous State Bar rules, lawyers who took inactive status were prohibited from practicing law, including handling pro bono cases. The Commission proposed changes in Bar Rules to permit retired lawyers to handle pro bono cases under the auspices of a legal services provider. To enable the State Bar to make these changes, Representatives Dan Blue and Paul Stam sponsored House Bill 1487, titled “Pro Bono Emeritus Lawyers.” This bill was passed in the 2007 legislative session, amending G.S. §84-16 to carve out a narrow exception permitting inactive Bar members “to solely represent indigent clients on a pro bono basis under the supervision of nonprofit corporations,” including each of the existing civil legal assistance providers in North Carolina.

Helped Improve Civil Rights Protections for the Disabled

Protection and Advocacy (P&A) is a federally mandated and funded program established to protect the “legal and human rights” of people with developmental disabilities, mental illness, and other disabilities. The governor had previously designated the Governor’s Advocacy Council for Persons with Disabilities (GACPD), located in the North Carolina State Department of Administration, as the P&A agency. After reviewing this issue, the Commission concluded that the designation of a private, nonprofit organization as the P&A agency would provide a better system for protecting and enforcing the civil rights of individuals in North Carolina with disabilities. The Commission further concluded that Carolina Legal Assistance (now Disability Rights North Carolina), a nonprofit legal services agency with a long track record for legal advocacy on behalf of people with disabilities, was best suited to serve in this role. Based on this assessment, the Commission adopted a resolution formally asking the governor to designate Carolina Legal Assistance as the P&A agency as soon as possible. In 2007, the governor re-designated the P&A agency from state government to Disability Rights North Carolina.

How the Commission Came About

Existing legal aid programs in North Carolina have long been unable to meet the need of low-income people for legal assistance in cases involving basic human needs. As the number of low-income people needing legal assistance has continued to increase, court, bar, and community leaders in North Carolina have worked to develop new methods and strategies to address this growing need.

In December 2005, shortly before his retirement from the bench, Chief Justice Lake, by order of the state Supreme Court, established the North Carolina Equal Access to Justice Commission, making North Carolina the nineteenth state to establish such an entity. The mission of the Commission is to expand access to civil legal representation for people of low income and modest means in North Carolina.

The 25-member Commission was structured to include representative stakeholders from across the state, to reflect the diversity of ethnic, gender, legal, and geographic communities of North Carolina and to be chaired by the Chief Justice. Commission members included representatives of the judiciary, legal aid programs, law schools, general public, state government, philanthropic organizations, business communities, and client communities, as well as practicing lawyers.



Moving Forward: Solutions to the Gaps in Access to Justice

Real People, Real Injustice

After kidney and pancreas transplants, a 44-year-old woman with diabetes was denied disability insurance benefits. Legal aid representation was the only way she was able to afford the anti-rejection medicine needed to maintain her transplant:

“The letter terminating the disability was a shocker; it meant no medication, no doctors’ visits, and the medication was very, very expensive. The anti-rejection medication is about \$1,500 a month, and I need that every day for the rest of my life as long as I have the transplant. Legal Services of Southern Piedmont really came through for me. It was a life or death situation, and they brought me life.”

More than 1.3 million people under age 65 are uninsured in North Carolina, including some 240,000 children. Availability of legal services often makes the difference in access to vital health care.

1. Establish the Right to Counsel in Civil Matters Affecting Basic Human Needs

There is a national movement underway to establish a right to assistance of counsel in civil cases, patterned on the constitutional right to representation in criminal cases. Currently, 80 percent of America’s low-income people with a civil legal problem face high-stakes proceedings—including eviction and child custody—without the assistance of an attorney. Representation by qualified advocates is necessary to ensure fair and adequate resolution of disputes in our legal system. It is unacceptable that legal processes are sometimes used to deny basic necessities to our fellow citizens without our state providing them with any legal help. Many other countries already guarantee a right to counsel in civil cases.

2. Increase Legislative Funding of Civil Legal Services at the State and Federal Levels

The most direct method for providing legal assistance in civil matters is public funding of existing civil legal assistance organizations. The Commission recommends that the following steps be taken:

- *Increase funding under the Access to Civil Justice Act (ACJA), as well as other existing funding for civil legal assistance organizations.*
- *Examine other sources of dedicated funding.*
- *Expand the statutory right to paid court-appointed attorneys in specified civil cases.*
- *Amend the North Carolina State Constitution to provide the right to civil representation in certain matters.*
- *Explore tax deductions for individual legal expenses.*

3. Encourage/Support Pro Bono Attorney Participation

The North Carolina State Bar should adopt ABA Model Rule 6.1, which states in part that: “Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year.” Furthermore, the Commission recommends that the following steps be taken:

- *Make pro bono mandatory for lawyers and law students.*
- *Encourage district and superior court judges to call upon attorneys to assist in pro bono matters.*
- *Increase recognition for those who do pro bono work.*
- *Encourage legal services agencies to provide substantive and procedural assistance to pro bono attorneys in every county and on the Internet.*
- *Train lawyers and provide them with diverse opportunities to participate in pro bono activities, individually or in partnership with other lawyers.*

4. Help Pro Se Litigants Navigate the Court System Successfully

Although qualified representation is necessary to ensure fair and adequate resolution of disputes in our increasingly complex legal system, some litigants may choose to proceed without representation (pro se) even if it is available, and many litigants will continue to appear pro se until representation is available to all. The Commission supports the following initiatives to improve access and success for pro se litigants:

- *Expand the resources available to pro se litigants and improve the uniformity in pro se resources across the state; the North Carolina Bar Association Foundation should continue its work on this issue.*
- *Create a full range of high-quality self-help materials and develop a process for distributing them to pro se litigants throughout the court system.*
- *Establish more Self-Serve Centers to offer forms and procedural instructions, referrals, free legal clinics, and other related services.*

- Develop appropriate alternative dispute resolution (ADR) mechanisms available to pro se litigants in all areas of civil law.
- Train judges and court employees about issues that impact pro se litigants.
- Involve law schools, law school clinics, and law students in supporting pro se litigants.
- Assess pro se litigation, by type and by district, with outcomes.
- Study the use of alternative forums for high volume pro se cases in specific areas such as domestic violence, education, health care, and employment.
- Continue to study pro se needs, practices, and resources by area to determine impact and focus resources.

5. Educate the Public

It is critical that the general public understand the need for representation of low-income people in certain civil matters and that broad public support be developed for increasing the availability of legal representation and pro se programs. The Commission supports a range of activities to achieve this goal:

- Present the stories of real people in the mass media to illustrate consequences of not having legal representation.
- Target specific audiences (including the business community, civic leaders/legislators, educators, the faith community, and nonprofit coalitions such as the United Way) with Equal Access to Justice events.
- Involve state bar organizations in preparation of “The Law and You” columns for local papers.
- Include low-income people in the decision-making processes.

6. Increase the Role of the Business Community

The business community should be educated regarding the business case for increasing the availability of representation for low-income people in certain civil matters. The Commission supports a number of activities to achieve this goal:

- Work through General Counsel and legal departments to engage and educate corporate leaders.
- Ask corporate leaders to support legislative initiatives, leverage vendor firms, and provide direct support in the form of funds, pro bono efforts, and other types of volunteerism.
- Identify and align with focus areas for specific industries and corporations, such as health care advocacy and hospitals.

7. Include People with Limited English Proficiency in the Justice System

The court system must be accessible to people with limited English proficiency. The Commission recommends the following to achieve this goal:

- Study the extent of the needs of the limited English proficiency population and evaluate current procedures for interpretation in the mediation process and in the court system.
- Expand resources for interpreters, including additional appropriations.
- Explore the use of volunteers, foreign language teachers, students, and others to fill the interpreter gap.
- Expand and improve training for judges, magistrates, and court administrators.

8. Increase Loan Repayment Assistance

Recent law school graduates have to pay off very large school loans—a difficult task considering the modest salaries of legal aid attorneys. This debt affects both the willingness and ability of new students to start in public service, as well as the retention rate for legal aid attorneys in their early years of practice. New federal legislation may provide some relief, but it is not yet fully operational and will not cover everyone. The Commission supports the continuation and expansion of current law school and statewide loan repayment assistance programs and state appropriations to reduce the debt of legal aid attorneys.



Real People, Real Injustice

A 56-year-old cafeteria worker turned to LANC when her landlord refused to repair dangerous problems in the house she rents:

“My problems with the house was gas leaks, a problem with the roof, and leaking in the kitchen and bedroom, leaking everywhere. Problems with the floors. The outside, paint peeling. My stairwell, steps, and floor was weak.

“I called the housing inspector, and he told me I had 16 different violations. After that I contacted Legal Aid. After we went to court, my landlord had my house fixed up, and I didn’t have any more problems. But if I hadn’t gone to Legal Aid, I would still have these problems, and I thank them very much.”

Decent, affordable housing is scarce. The average two-bedroom apartment in North Carolina costs over \$7,300 per year. There are approximately 100,000 units of subsidized housing for the 3.2 million people financially eligible for legal aid services.

“[W]e leave the poor unrepresented on the most crushing problems of life—

divorce, child custody, domestic violence, housing, benefits. We think it natural that a commercial dispute between battling corporations takes six months to try, while the fate of a battered child is determined in only a few minutes. What passes for civil justice among the have-nots is breathtaking.”

*Gene Nichol, former President of the College of William and Mary
and former Dean of the University of North Carolina School of Law*

Current Providers of Civil Legal Services in North Carolina

These providers cover all areas of the state, offer a wide range of services, and serve a variety of clients. They need a dramatic increase in support to provide assistance to all low-income people who need help with legal problems affecting basic human needs.

List of primary providers:

Legal Aid of North Carolina (LANC)
North Carolina Justice Center
Disability Rights North Carolina
North Carolina Prisoner Legal Services
Land Loss Prevention Project
Legal Services of Southern Piedmont (LSSP)
Pisgah Legal Services
The Council for Children's Rights (CCR)
The Child Advocacy Commission
The Children's Law Center of Central
North Carolina

Additional programs providing support to legal advocacy organizations:

The North Carolina State Bar IOLTA Plan
The North Carolina Legal Education
Assistance Foundation (NC LEAF)
The Public Service and Pro Bono Activities
Department of NCBAF
The North Carolina Clients Council

Members of the Original Commission

The Honorable Sarah Parker, Chair

Reid Calwell Adams
Representative Martha Alexander
Victor J. Boone
Senator Daniel Clodfelter
Reginald Combs
Anita S. Earls
James Nicholas Ellis
Catherine Graham

George V. Hanna, III
The Honorable A. Robinson Hassell
George R. Hausen, Jr.
The Honorable Paul L. Jones
Melinda Lawrence
The Honorable James Long
The Honorable Linda M. McGee
E. Fitzgerald Parnell

Michael P. Rizer
Barbara Roole
Kenneth Schorr
E. Carol Spruill
James M. Talley, Jr.
Richard M. Taylor, Jr.
Willis Williams
Michelle Cofield, Executive Director

For more information about the Equal Access to Justice Commission and how you can help improve civil legal services for the poor in North Carolina, contact Michelle Cofield at the North Carolina Bar Association at 919.677.0561 or mcofield@ncbar.org.
